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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,977	09/09/2003	Allan Todd Berry	40,730	1304

7590
Joseph G. Mitchell, Esq.
4521 Derby Lane
Smyrna, GA 30082

12/27/2006

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p align="center">10/657,977</p>	<p>Applicant(s)</p> <p align="center">BERRY, ALLAN TODD</p>	
	<p>Examiner</p> <p align="center">David J. Parsley</p>	<p>Art Unit</p> <p align="center">3643</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Specification

1. The disclosure is objected to because of the following informalities: it does not include a reference numeral for the data bus communications as seen in lines 13-14 of page 10 of the disclosure.

Appropriate correction is required.

Drawings

2. The drawings are objected to because the data bus communications should have a reference numeral in the claims since this is a structural limitation found in the claims. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 24 recites the limitation "the chicken bird" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to whether a single first and second shackle or plurality of first and second shackles are claimed. The following amendments to the claims are submitted to overcome the claim objections and indefinite rejections set forth above:

For example in claim 24, An apparatus to electronically automate the sorting of chicken feet in the category of edible or inedible, comprising:

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sensors including at least one photoelectric sensor and at least one inductive sensor for tracking a whole chicken bird less its chicken feet in at least one first shackle of a plurality of first shackles and only said chicken feet separate from said whole chicken bird in at least one second shackle of a plurality of second shackles;

a programmable logic card to track and store information received by said sensors;

a means to communicate between said sensors and said programmable logic card; at least one inspector reject button communicating with said programmable logic card;

a flag on said at least one first shackle; and

a flag on said at least one second shackle.

With similar amendments being made to claim 25.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0139130 to Steffler et al. in view of U.S. Patent No. 4,150,374

to Brook in view of U.S. Patent Application Publication No. 2003/0065414 to van den Nieuwelaar et al. in view of DE Patent No. 4132830.

Steffler et al. discloses an apparatus/method to electronically automate the sorting of chicken feet in the category of edible or inedible, comprising, a sensing means – at 52-56 and/or 62-64 and/or 70-72, for tracking the chicken feet and the associated processed chicken, a programmable means – at 58 comprising a programmable logic card – see for example paragraphs [0040]-[0044], to track and store information received by the programmable means, and a communication means (inherent) between the sensing means and the programmable means – see for example paragraphs [0033]-[0051]. Steffler et al. further discloses the sensing means comprises at least one photoelectric sensor – at 62 – see for example paragraph [0051] and at least one other sensor – at 52-56, 64 or 70-72. Steffler et al. does not disclose at least one inductive sensor. Brook does disclose at least one inductive sensor – at 15 – see for example column 3 lines 10-17. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. and add the sensing means with at least one inductive sensor of Brook, so as to allow for the location of the trolleys to be automatically determined by the device. Steffler et al. as modified by Brook does not disclose the programmable means receives reject information from an inspector reject button and compares the reject information to the information received from the sensing means. van den Nieuwelaar et al. does disclose the programmable means – at 12, receives reject information from an inspector reject button – at 16, and compares the reject information to the information received from the sensing means – at 8a-8e – see for example paragraph [0081]. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by Brook and add the

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programmable means receiving information from the inspector reject button of van den Nieuwelaar et al., so as to allow for data on each animal/carcass to be stored for reference or later use. Steffler et al. as modified by Brook and van den Nieuwelaar et al. does not disclose a flag attached to a shackle. The German patent does disclose a flag – at 50,60-64, see the English abstract attached to the shackle – at 60 see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by Brook and van den Nieuwelaar et al., and add the flag attached to the shackle of the German patent so as to allow for the shackle and the carcass carried by the shackle to be identified as they are conveyed along the processing line.

Claims 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0139130 to Steffler et al. in view of U.S. Patent No. 4,150,374 to Brook in view of U.S. Patent No. 4,570,299 to Ellis in view of DE Patent No. 4132830.

Steffler et al. discloses an apparatus/method to electronically automate the sorting of chicken feet in the category of edible or inedible, comprising, a sensing means – at 52-56 and/or 62-64 and/or 70-72, for tracking the chicken feet and the associated processed chicken, a programmable means – at 58 comprising a programmable logic card – see for example paragraphs [0040]-[0044], to track and store information received by the programmable means, and a communication means (inherent) between the sensing means and the programmable means – see for example paragraphs [0033]-[0051]. Steffler et al. further discloses the sensing means comprises at least one photoelectric sensor – at 62 – see for example paragraph [0051] and at least one other sensor – at 52-56, 64 or 70-72. Steffler et al. does not disclose at least one inductive sensor. Brook does disclose at least one inductive sensor – at 15 – see for example

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column 3 lines 10-17. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. and add the sensing means with at least one inductive sensor of Brook, so as to allow for the location of the trolleys to be automatically determined by the device. Steffler et al. as modified by Brook does not disclose the programmable means receives reject information from an inspector reject button and compares the reject information to the information received from the sensing means. Ellis does disclose the programmable means – at 27-30, receives reject information from an inspector reject button – at 31– see for example figure 1 an column 3 lines 30-61. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by Brook and add the programmable means receiving information from the inspector reject button of Ellis, so as to allow for data on each animal/carcass to be stored for reference or later use. Steffler et al. as modified by Brook and Ellis does not disclose a flag attached to a shackle. The German patent does disclose a flag – at 50,60-64, see the English abstract attached to the shackle – at 60 see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by Brook and Ellis, and add the flag attached to the shackle of the German patent so as to allow for the shackle and the carcass carried by the shackle to be identified as they are conveyed along the processing line.

Allowable Subject Matter

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6. The following amendments to the independent claims may receive favorable consideration following further search and/or consideration. These limitations are added in addition to the proposed limitation in paragraph 2 above.

In claims 24-25, add the limitations of - a picking line, an eviscerating line and an automatic rehanger including at least one trolley located between the picking line and the eviscerating line, wherein the at least one photoelectric sensor is adapted to detect the presence of a whole bird and chicken feet on the picking line and eviscerating line, and wherein the inductive sensor is adapted to detect the presence of the whole birds and chicken feet on the at least one trolley on the automatic rehanger- - and add the term - metal- - before flag in lines 12-13 of claim 24 and in lines 11-12 of claim 25.

Response to Arguments

7. The Steffler et al. reference US 2003/0139130 discloses an apparatus/method to electronically automate the sorting of chicken feet in the category of edible or inedible, comprising, a sensing means – at 52-56 and/or 62-64 and/or 70-72, for tracking the chicken feet and the associated processed chicken, a programmable means – at 58 comprising a programmable logic card – see for example paragraphs [0040]-[0044], to track and store information received by the programmable means, and a communication means (inherent) between the sensing means and the programmable means – see for example paragraphs [0033]-[0051]. Steffler et al. further discloses the sensing means comprises at least one photoelectric sensor – at 62 – see for example paragraph [0051] and at least one other sensor – at 52-56, 64 or

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70-72. The Brook reference US 4150374 does disclose at least one inductive sensor – at 15 – see for example column 3 lines 10-17. The motivation to combine the Steffler et al. and Brook references stated above in paragraph 5 is found in the general knowledge of one of ordinary skill in the art. The van den Nieuwelaar et al. reference US 2003/0065414 does disclose the programmable means – at 12, receives reject information from an inspector reject button – at 16, and compares the reject information to the information received from the sensing means – at 8a-8e – see for example paragraph [0081]. The motivation to combine the Steffler et al. and van den Nieuwelaar et al. references stated above in paragraph 5 is found in the general knowledge of one of ordinary skill in the art. The German patent does disclose a flag – at 50,60-64, see the English abstract attached to the shackle – at 60 see for example figure 3. The motivation to combine the Steffler et al. and the German references stated above in paragraph 5 is found in the general knowledge of one of ordinary skill in the art.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

In view of the appeal brief filed on 10-6-06, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:


(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



PETER M. POON
SUPERVISORY PATENT EXAMINER


David Parsley
Patent Examiner
Art Unit 3643